

NEW JERSEY BOARD OF PUBLIC UTILITIES
Nuclear Plant Decommissioning Cost and Trust Fund
Review Rules

Readoption with Amendments
N.J.A.C. 14:5A
BPU Docket #: EX08040266

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Nuclear Plant Decommissioning Cost and Trust Fund Review Rules

Readoption with amendments: N.J.A.C. 14:5A

Proposed: June 16, 2008, at 40 N.J.R. 3594(a).

Adopted: October 3, 2008, by the Board of Public Utilities,
 Jeanne M. Fox, President; Frederick F. Butler, Jo-
 seph L. Fiordaliso, Nicholas V. Asselta, and Eliza-
 beth Randall, Commissioners.

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The Board of Public Utilities (Board) is readopting with amendments its rules regarding the costs of decommissioning nuclear generating stations, found at N.J.A.C. 14:5A. The rules provide procedures to ensure that there will be adequate funds for the proper decommissioning of nuclear power plants owned by New Jersey utilities. Specifically, the rules require the filing of periodic update reports regarding trust funds held by a utility to cover decommissioning costs. The rules set forth the required contents of the reports, procedures for public notice and comment on the reports, and procedures for

Board review of the reports. The readoption was proposed on June 16, 2008 and comments were accepted through August 15, 2008. No comments were received. The rule is being adopted as proposed.

At the present time, the only nuclear reactor subject to N.J.A.C. 14:5A is the Three Mile Island Nuclear Generating Station Unit 2 (TMI-2), in which Jersey Central Power & Light (JCP&L) has a 25 percent ownership interest. Since the deregulation of New Jersey's energy industry in 1999, all similar interests previously held by Board-regulated utilities have been transferred to out of State owners or non-regulated subsidiaries under Board orders that addressed, among other things, the funding of decommissioning costs associated with those facilities.

As a result of the 1979 accident, the TMI-2 reactor ceased commercial operations. The TMI-2 reactor has been permanently shut down and defueled, with the reactor coolant system drained, the radioactive water decontaminated and evaporated, radioactive waste shipped off-site to an appropriate disposal site, reactor fuel and core debris shipped off-site to a Department of Energy facility, and the remainder of the site being monitored. The facility owners plan to keep the TMI-2 facility in long-term, monitored storage until the operating license for the Three Mile Island Unit 1 (TMI-1) plant expires, at which time both plants will be decommissioned. The current NRC license for TMI-1 is set to expire in 2014. The NRC issued a possession-only license for TMI-2 in September 1993, which is still in effect.

Summary of Public Comments and Agency Responses:

No comments were received.

Federal Standards Analysis

Executive Order No. 27(1994) and P.L. 1995, c.65 (N.J.S.A. 52:14B-22 through 24) require State agencies, which adopt State rules that exceed any Federal requirements, to include in the rulemaking document a comparison with Federal law. The readoption with amendments of N.J.A.C. 14:5A contains some standards and requirements that exceed those of comparable Federal law. The comparable Federal law is found in the rules of the Nuclear Regulatory Commission (NRC) at 10 C.F.R. §50.75. In general, the State rules require somewhat more frequent and detailed reporting by operators of nuclear facilities in commercial operation, and require a site-specific, as opposed to formulaic, determination of decommissioning costs. However, the NRC rules requiring cost updates do not apply to nuclear facilities that have ceased commercial operation once the required preliminary decommissioning cost estimates have been submitted 5 years and 2 years before the projected end of operations. 10 CFR 50.75 (f). Therefore, the rules herein have no corresponding Federal law or requirement that applies to a nuclear generating unit, like TMI-2, that is no longer in commercial operation.

The major difference between the State and Federal rules, other than the distinction be-

tween units that are in commercial operation and those that are not, lies in the different approaches for determining the required amount of each decommissioning fund. The NRC rules at 10 C.F.R. §50.75(c)(1) set forth a minimum dollar amount based on the size of the nuclear facility as measured by its thermal output in megawatts-thermal (MWt), to which is added a factor for escalation of the costs of labor, energy and waste burial. By contrast, the State rules require a site-specific decommissioning cost estimate that takes into account not only the particulars of the nuclear facility as built, but also the state of the art in decommissioning technology, and up-to-date cost estimates for disposal and all other related costs. The State rules require that the decommissioning cost estimate be accompanied by a complete description of the decommissioning plan and of the basis for the cost estimates. The Federal rule requires only the dollar amount of the cost estimate, with minimal background information on how that amount was calculated.

The cost to nuclear facility operators of performing the State-required decommissioning cost estimate will be substantially higher than the cost of demonstrating compliance under the Federal rules. This stems from the information gathering, planning and analysis, and calculations required. However, this site-specific approach is necessary to ensure that a decommissioning fund will be adequate to address the specific complexities of the actual site and facility; it ensures that the fund reflects the changes over time in decommissioning technology and other variables; and it minimizes the chance of encountering unforeseen expenses at the time of decommissioning. This approach results in a much more accurate decommissioning cost estimate. An accurate cost estimate is crucial to prevent overcharging of ratepayers for a decommissioning fund that is larger than necessary, or undercharging that can result in insufficient funding (and thus in a possible rate spike) when operations cease and decommissioning begins. Thus, the costs of this site-specific approach are outweighed by the fact that without this level of accuracy, the Board could not carry out its mandate to ensure that decommissioning funds, and consequently the utility rates that support them, will be adequate but not excessive.

An additional aspect of the State rules that is somewhat more stringent than the Federal rules is the degree of oversight regarding the management of the decommissioning trust fund. The State requires a nuclear facility operator to submit an annual report of decommissioning trust fund balances. See N.J.A.C. 14:5A-4.2. The NRC rules require only bi-annual reporting of both the trust fund balance and updated decommissioning cost estimates, until 5 years before the cessation of operations when reporting of trust fund balances is required annually. The State rules also require at N.J.A.C. 14:5A-4.2(a)1vii that a nuclear facility operator submit an accounting of all fund management and trustee fees, commissions and taxes incurred in maintaining the decommissioning trust fund. Compliance with the State rules regarding trust fund management will result in minor additional costs for nuclear facility operators, because the information they must gather and submit is already in their possession. Again, the Board's need for up-to-date, accurate information in order to carry out its mandate to protect ratepayers justifies these minor costs.

The State rules at N.J.A.C. 14:5A-4.2(a)1xi include a requirement not found in the Fed-

eral rules, that a New Jersey nuclear facility owner must report the decommissioning trust fund balances of out-of-state joint nuclear facility owners. Under the Federal rules, these balances would be separately reported by each owner. The State rule requirement for a combined figure allows the Board to obtain a comprehensive picture of the entire decommissioning fund, so as to ensure that New Jersey ratepayers do not subsidize decommissioning costs that should be carried by out-of-state joint owners. Determining this combined figure is likely to require a small amount of extra time spent in calculations, so that the cost of complying with the State rule in this respect may be slightly higher than the cost of complying with the Federal rule. However, this cost will be negligible, and the required information is necessary in order to ensure that the Board has complete information.

In general, the additional stringency of the State rules is justified by the Board's statutory mandate to oversee utility rates. The Federal rules specifically recognize that state commissions may need additional information, and that the Federal reports are not intended to be used by themselves for the setting of rates. Unlike the NRC, the Board has an obligation to ensure that the portion of New Jersey utility rates that supports decommissioning funds is adequate but not excessive. In order to do this, the Board must have accurate and up-to-date information on the realistic decommissioning costs for each nuclear facility, as well as on the status and management of each decommissioning trust fund. The State rules' more stringent requirements are necessary in order to provide this information to the Board.

Full text of the readoption with amendments can be found in the New Jersey Administrative Code at N.J.A.C. 14:5A.